

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH NORTH, SS.

MARCH TERM 2007

State of New Hampshire

v.

Michael Addison

No. 07-S-0254

State's Motion Regarding Scheduling of Non-Capital Trials

NOW COME the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and submits the following motion regarding scheduling of Non-Capital Trials:

1. On or about October 16, 2006, Manchester Police Officer Michael Briggs was shot in the head. He subsequently died from his injuries. The defendant was subsequently arrested on one charge of Capital Murder for knowingly shooting Ofr. Briggs.
2. On December 15, 2006, the Hillsborough County Grand Jury for the Northern District returned two indictments charging the defendant with the crimes of being a felon in possession of a firearm and reckless conduct with a deadly weapon. (No. 06-S-2572 and -2573). These indictments allege that on October 15, 2006, Addison engaged in reckless conduct when he used a firearm to fire toward an apartment building at 345 Edward J. Roy Dr. and that he on that date he possessed a firearm after being convicted of a felony against the person or property of another in Massachusetts. This conduct occurred approximately 24-hours before the murder of Ofr. Briggs. The defendant and his accomplice, Antoine Bell Rogers, went to 345 Edward J. Roy Dr. with Angela Swist and Teresia Shipley. The four of them went to that apartment complex because she had had an argument with her ex-boyfriend who lives there. He had made

threats to both her and Addison. When they arrived at 345 Edward J. Roy Dr., the defendant and Addison got out of the vehicle and walked over to the building. Shipley heard 16-17 shots from a handgun and then Bell Rogers and the defendant ran back to the car. Several individuals were present in the apartment when the defendant and Bell Rogers got out of the car and fired the gun at the building.

3. On December 19, 2006, the Hillsborough County Grand Jury for the Southern District returned two indictments charging the defendant with armed robbery and conspiracy to commit robbery of a 7-Eleven convenience store in Hudson on October 11, 2006. (Nos. 06-S-2451 and -2452). The defendant conspired with and committed the armed robbery with Antoine Bell Rogers. The defendant is charged with pointing a firearm at the store clerk and demanding money. Teresia Shipley and Angela Swist also participated in the robbery. This conduct also occurred prior to the murder of Ofr. Briggs.

4. On February 20, 2007, the grand jury returned an indictment charging the defendant with Capital Murder (No. 07-S-0254). On March 13, 2007, the Court (McGuire, J.) issued a scheduling order in the Capital Murder case, scheduling trial to begin in September 2008. The Court ordered the State to file a motion by March 19, 2007, if it sought to try the other non-capital charges before the Capital Murder trial.

5. The State requests that this Court schedule the non-capital charges pending in this jurisdiction (Nos. 06-S-2572 and -2573) before the Capital Murder trial.¹

6. The defendant's criminal conduct in the days immediately preceding the murder of Ofr. Briggs is relevant to the penalty phase of the capital murder proceeding.² Because the

¹ The State intends to file this same motion with the Hillsborough County Superior Court, Southern District, requesting the charges pending in that jurisdiction also be scheduled before the Capital Murder trial.

² This conduct may be independently relevant in the guilt phase of the trial, but that issue is not presently before this Court.

conduct occurred before the murder of Ofr. Briggs, the State should have a right to have a jury adjudicate the defendant's guilt before the State presents its case in the penalty phase of the capital murder trial. Indeed, this Court has not yet ruled whether the defendant's non-adjudicated criminal conduct prior to the murder is admissible in the penalty phase of the capital trial. The State believes that both adjudicated and non-adjudicated criminal conduct is admissible in the penalty phase of a capital murder prosecution. However, since this Court has not yet had an opportunity to rule on the admissibility of non-adjudicated criminal conduct, the State should have an opportunity to obtain convictions on the conduct before the penalty phase of the murder trial. If this Court were to rule that non-adjudicated criminal conduct is not admissible in the penalty phase of the trial and it scheduled the non-capital charges for trial after the murder case, then the Court would preclude the State from being able to present highly relevant and probative evidence to the capital jury.

7. Moreover, the public and the victims have a right to have criminal conduct adjudicated in a timely manner. See United States v. McDaniel, 411 F. Supp. 2d 1323, 1325 (D. Utah 2005). As the United States Supreme Court has recognized:

[W]hen a crime is committed against a community, the community has a strong collective psychological and moral interest in swiftly bringing the person responsible to justice. Prompt acquittal of a person wrongly accused, which forces prosecutorial investigation to continue, is as important as prompt conviction and sentence of a person rightly accused. Crime inflicts a wound on the community, and that wound may not begin to heal until criminal proceedings have come to an end.

Flanagan v. United States, 465 U.S. 259, 264 (1984); see also Barker v. Wingo, 407 U.S. 514, 519 (1972) ("[T]here is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused."); Id. at 320 (recognizing that delay may advantage the accused and disadvantage the State); Dickey v. Florida, 398 U.S. 30, 42

(1970) ("The public is concerned with effective prosecution of criminal cases, both to restrain those guilty of crime and to deter those contemplating it. . . . And the greater the lapse of time between commission of an offense and the conviction of the offender, the less deterrent value of his conviction."). In fact, the United States Supreme Court has recognized that the trial on some of the defendant's charges should not delay the prosecution of other charges. The Court observed: "If a plea of guilty and imprisonment for one offence is to postpone trial on many others, it furnishes the criminal an opportunity to avoid the full expiation of his crimes." Ponzi v. Fessenden, 258 U.S. 254, 264 (1922).

8. The crimes in both Hillsborough-North and Hillsborough-South have individuals who were victimized before the murder of Ofr. Briggs. Those individuals have a right to prompt resolution of the charges. Cf. RSA 21-M:8-k (Rights of Crime Victims, specifically provides victims with "the right to have inconveniences associated with participation in the criminal justice process minimized"). If this Court were to postpone the non-capital cases until after the capital murder prosecution, by the time the capital murder trial is completed those cases will not be tried for more than 2 ½ years after the conduct occurred.

11. The effect of pretrial publicity on the capital case as a result of the trial of non-capital offense will be minimal and can be addressed through the individual voir dire of jurors. Indeed, the pretrial publicity at issue in this case to date has not even approached the level of publicity at issue in State v. Smart, 136 N.H. 639 (1993). Despite the "avalanche" of media attention from across the country, the Supreme Court found that the defendant's rights were not violated. Id. at 649-53. The Court specifically analyzed the extensive coverage of the case immediately before the trial, including discussion of three new indictments which were not admissible in the murder trial. Id. at 649-50. The Court found that a searching individual voir

dire revealed no prejudice by any of the jurors. Id. Moreover, the Court recognized that the fact that jurors may be familiar with a case does not preclude them from sitting as jurors so long as the juror has not formed an opinion about the case. Id. at 650.

9. In the case at bar, the capital murder trial is scheduled for September 2008 -- more than a year and a half from the indictment. The non-capital cases can be scheduled sufficiently before the capital murder trial so that any taint on the jury pool as a result of the pretrial publicity will be substantially diminished by the time the capital murder trial begins. Cf. Smart, 136 N.H. at 649 (recognizing that several of the media stories relied on by the defendant in support of her claim of unfair pretrial publicity occurred immediately after the murder).

10. Antoine Bell Rogers, Angela Swist, and Teresia Shipley have all been charged with conduct similar to that of the defendant. Shipley is charged with accomplice to armed robbery and conspiracy to commit armed robbery at the 7-Eleven store. Shipley's indictments contain allegations that both Addison and Bell Rogers committed the robbery itself. Shipley's trial on these charges is scheduled to begin on March 19, 2007. Angela Swist has been indicted on the same charges as an accomplice and conspiracy to commit robbery of the 7-Eleven. Swist's case is scheduled for trial on June 4, 2006. Bell Rogers is charged with conspiracy and criminal liability for the conduct of another as a result of the 7-Eleven robbery. That case was scheduled for trial on April 30, 2007, although the defense has filed a motion to continue the trial. Bell Rogers has also been charged with being a felon in possession of a deadly weapon, engaging in reckless conduct and being an accomplice to reckless conduct in connection with the shooting at 345 Edward J. Roy Dr. Those charges have not yet been scheduled for trial. It is virtually certain that all three co-defendants will be tried before the defendant's capital murder trial. Accordingly, the facts and circumstances surrounding the defendant's participation in those

other cases will be a matter of public record and likely subject to media attention before the capital murder trial. Thus, any additional effect of the pretrial publicity on the jury pool as a result of the defendant's non-capital prosecutions is likely to be *de minimis*.

11. Indeed, the public's attention to the capital murder prosecution will likely be far more substantial than the attention on the non-capital cases. Thus, delaying the trials in the defendant's non-capital cases until after the capital trial may make it difficult, if not impossible, to empanel a jury in those cases.

WHEREFORE, the parties respectfully request that this Honorable Court:

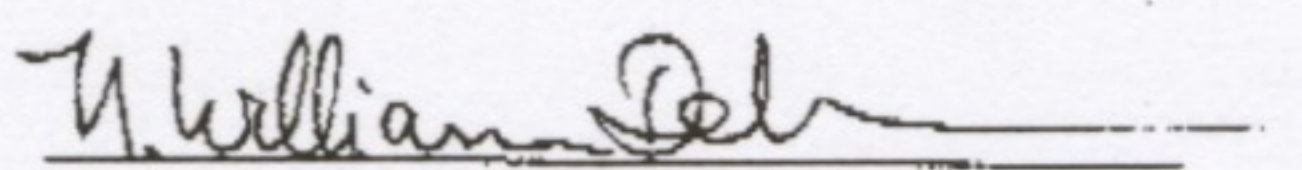
- A. Schedule the non-capital charges (Nos. 06-S-2572 and -2573) before the capital murder trial; and
- B. Grant such further relief as may be just and proper.


Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

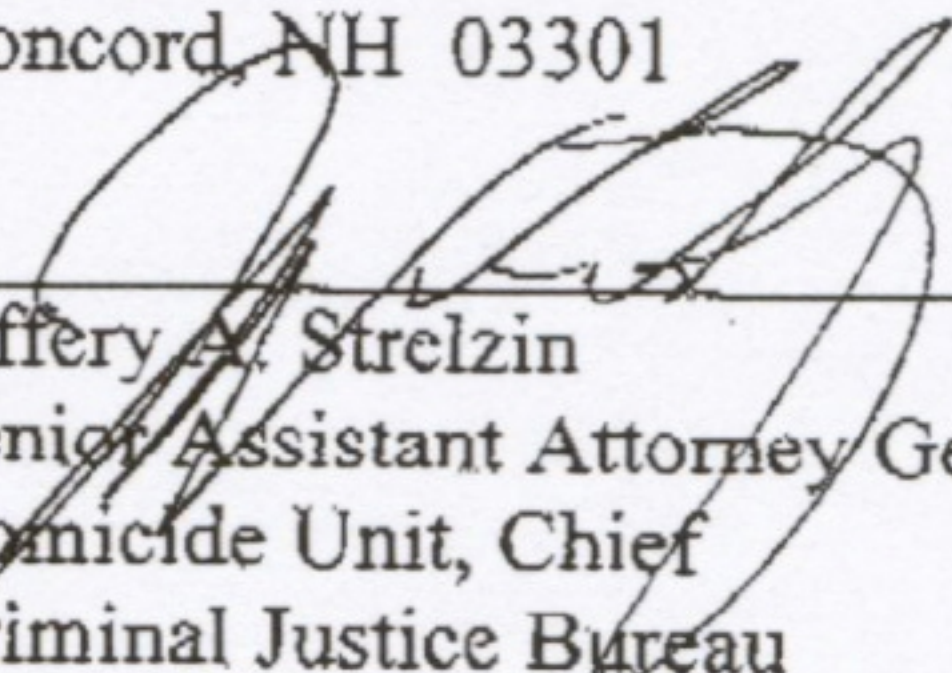
Kelly A. Ayotte
Attorney General


N. William Delker
Senior Assistant Attorney General
Homicide Unit
Criminal Justice Bureau
33 Capitol Street
Concord, NH 03301


Karen E. Huntress
Assistant Attorney General
Homicide Unit

7

Criminal Justice Bureau
33 Capitol Street
Concord, NH 03301



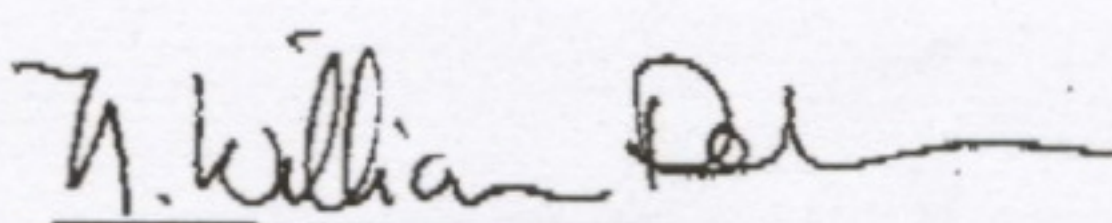
Jeffery A. Strelzin
Senior Assistant Attorney General
Homicide Unit, Chief
Criminal Justice Bureau
33 Capitol Street
Concord, NH 03301

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been mailed to Richard Guerriero, Esq.,

David Rothstein, Esq., and Donna Brown, Esq., counsel of record for the defendant.

March 19, 2007



N. William Delker